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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,423	02/13/2002	Lawrence G. Reid JR.	00471/268588	7582

7590

01/13/2004

Charles W. Calkins
Kilpatrick Stockton LLP
1001 West Fourth Street
Winston-Salem, NC 27101

EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 01/13/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/075,423		REID ET AL.	
	Examiner		Art Unit	
	Danton DeMille		3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 15-20 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 21-24 and 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. It would appear applicant is referring to the plastic bag closure means ZIPLOC® when referring to “zip-lock”. The use of the trademark ZIPLOC® has been noted in this application.

It should be capitalized wherever it appears and be accompanied by the generic terminology.

2. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Election/Restrictions

3. Applicant's election with traverse in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the method claims 21-25 merely recite the steps incorporating the elements of claims 1, 2, 4. While this may be true for claims 21-24 this is not found persuasive for claim 25 because claim 25 recites a specific process of laminating a double layer and laminating a third layer to form a triple layered section wherein the closure mechanism is placed between two of the triple layered sections. This specific method is not part of the product claims. Therefore claim 25 is maintained as being drawn to method of making the bag that is distinct from the product because the closure mechanism can be formed integral with the inner layer.

4. Regarding the election of the string tie straps of figure 2, applicant argues that the ZIPLOC® attachment mechanism is not a species of attaching the therapeutic bag. This is true. The tie strings of figure 2 are the attachment mechanism. This is one species of the attachment mechanism with the elastic compression attachment wrap of figures 3 and 4 being the other

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species. These two species are patentably distinct. Claims 15-20 are drawn to the attachment wrap of figures 3 and 4.

5. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1-5, 12, 14, 26, 27, 28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hubbard et al. 4,347,848.** It is not clear how the claims define over Hubbard. Hubbard teaches a chamber 30 having a mouth 34, 18 and an interior containment pocket, a mechanism 50 for retaining material within the chamber and tie strings 22, 24, 26, 28 are an attachment mechanism fixedly attached to the bag for positioning and holding the chamber in a desired location.

8. Regarding claim 2, the mechanism for retaining 50, when clamped to the bag, is fixedly attached to the chamber for sealing the interior containment pocket closed in a leak-proof manner. Moreover, lines 32-35 teach using a piece of tape to hold the mechanism in proper position on the bag.

9. Regarding claim 3, the mechanism for retaining 50 would appear to be a “zip-lock type closure seal” because it has a blade-like member 52 forced into the sheath member 54 in the same manner as ZIPLOC® type closures.

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10. Regarding claims 4, 5, the waterproof bag 30 of Hubbard comprises first and second walls sealed along its edges as indicated by the seam 32 with the top edges being unattached to form the mouth and throat 34.

11. Regarding claim 12, Hubbard teaches a first pair of tie strings 26 and 28 proximate the bottom edge of the chamber and a second pair 22, 24 attached proximate the top edge of the chamber.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:


(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

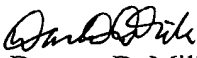
13. **Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbard et al. 4,347,848.** Hubbard teaches the bag is sealed along the edges at seam 32. It is not clear what type of seam it is but any conventional means of sealing the plastic sheets together would have been an obvious provision. Heat sealing as well as sonic welding are conventional and well within the realm of the artisan of ordinary skill and an obvious provision in Hubbard. Figure 3 of Hubbard shows the outer layer 46, middle layer, 44 and inner layer 42 insulating the bag from the external environment. Hubbard teaches the layers are bonded together. Hubbard also teaches the inner layer 42 is polyethylene and one suitable material for the absorbent layers is polyester fibers. Any conventional material such as polypropylene would have been an obvious equivalent alternative.

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14. **Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbard et al. 4,347,848 in view of Delk et al. 5,641,325.** While the tie strings of Hubbard appear to be parallel to the side edges of the bag there is no unobviousness to the location of the tie strings. Delk teaches another arrangement where the tie strings 310, 360 are perpendicular to the side edges. Such details are well within the realm of the artisan of ordinary skill. The arrangement of the tie strips is dependent on the type of application to the body. A long narrow area of application in a vertical direction would require the tie strings to be perpendicular to the side edges. A long narrow area in a horizontal direction such as shown by Hubbard figure 1 would require the tie strings to be parallel to the side edges. Such is obvious to one of ordinary skill in the art.

15. **Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbard et al. 4,347,848 in view of Bride-Flynn.** Hubbard teaches a closure mechanism 50 that is externally applied to the bag for closing the opening of the bag. Bride-Flynn teaches a closure mechanism 20 that is joined to the inside surface of the bag. Both closure mechanisms are obvious equivalent alternative ways of doing the same thing. It would have been obvious to one of ordinary skill in the art to modify Hubbard to use the closure mechanism as taught by Bride-Flynn instead of the closure mechanism of Hubbard so as to have an integral means of closing the bag.

ddd
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 (703) 308-3713
Fax: (703) 872-9306
danton.demille@uspto.gov


Danton DeMille
Primary Examiner
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